

Letter of Findings Number: 01-20120235
Income Tax
For The Tax Year 2010

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ISSUE

I. Income Tax – Residency.

Authority: IC § 6-3-1-12; IC § 6-1.1-12-37; [45 IAC 3.1-1-22](#).

Taxpayers protest the denial of their claim for refund.

STATEMENT OF FACTS

Taxpayers, filing jointly, filed an Indiana form IT-40PNR for the 2010 tax year claiming they were only Indiana residents for the month of January. On February 1, 2010, Taxpayers moved to Washington where they lived for the remainder of 2010. Taxpayer's form IT-40PNR claimed a refund was due for the 2010 tax year. The Indiana Department of Revenue ("Department") determined that Taxpayers were domiciled in Indiana for all of 2010 and denied most of Taxpayers' claim for refund. Taxpayers protested the Department's determination of residency. An administrative hearing was held and this Letter of Findings results. Further facts will be supplied as required.

I. Income Tax – Residency.

DISCUSSION

Taxpayers protest the denial of their refund and argue that they became residents of Washington on February 1, 2010, when they began living there. The Department determined that Taxpayers were Indiana residents for all of 2010 because they maintained Indiana driver's licenses, had both of their cars registered in Indiana, and owned a home in Indiana. Taxpayers argue that they never changed their licenses, reregistered their cars, or sold their home because they were intending on returning to Indiana and that they were only in Washington for a temporary job assignment.

Pursuant to IC § 6-3-1-12, a resident is defined as follows:

The term "resident" includes (a) any individual who was domiciled in this state during the taxable year, or (b) any individual who maintains a permanent place of residence in this state and spends more than one hundred eighty-three (183) days of the taxable year within this state, or (c) any estate of a deceased person defined in (a) or (b), or (d) any trust which has a situs within this state.

(Emphasis added).

In other words, a resident includes individuals who are domiciled in Indiana or spent more than 183 days in Indiana.

Taxpayers argue that they were not Indiana residents because they only spent thirty-four days in Indiana in 2010. Taxpayers' argument satisfies IC § 6-3-1-12(b), but their argument does not address the issue of their domicile (IC § 6-3-1-12(a)).

Domicile is defined by [45 IAC 3.1-1-22](#), which states:

"Domicile" Defined. For the purposes of this Act, a person has only one domicile at a given time even though that person maintains more than one residence at that time. Once a domicile has been established, it remains until the conditions necessary for a change of domicile occur.

In order to establish a new domicile, the person must be physically present at a place, and must have the simultaneous intent of establishing a home at that place. It is not necessary that the person intend to remain there until death; however, if the person, at the time of moving to the new location, has definite plans to leave that new location, then no new domicile has been established.

The determination of a person's intent in relocating is necessarily a subjective determination. There is no one set of standards that will accurately indicate the person's intent in every relocation. The determination must be made on the facts present in each individual case. Relevant facts in determining whether a new domicile has been established include, but are not limited to:

- (1) Purchasing or renting residential property
- (2) Registering to vote
- (3) Seeking elective office
- (4) Filing a resident state income tax return or complying with the homestead laws of a state
- (5) Receiving public assistance
- (6) Titling and registering a motor vehicle
- (7) Preparing a new last will and testament which includes the state of domicile.

(Emphasis added).

In other words, a new domicile is not necessarily created when an individual moves to a new state. Instead,

the individual must move to a new state and have intent to remain in that state.

In this case, Taxpayers moved to Washington for a temporary job assignment. Taxpayers stated that they always intended to return to Indiana once the job was completed. This statement alone is enough to show that Taxpayers were domiciled in Indiana. However, when applying the factors to determine domicile, Taxpayers' actions demonstrate further their intent to return to Indiana. In 2010, Taxpayers held Indiana driver's licenses, maintained a home in Indiana, had their cars registered in Indiana, and were registered to vote in Indiana. Furthermore, Taxpayers maintained homestead tax benefits for their home in Indiana.

IC § 6-1.1-12-37(a)(2) states in relevant part regarding the Homestead Deduction:

"Homestead" means an individual's principal place of residence:

(A) that is located in Indiana;

(B) that:

(i) the individual owns;

(ii) the individual is buying under a contract; recorded in the county recorder's office, that provides that the individual is to pay the property taxes on the residence;

(iii) the individual is entitled to occupy as a tenant-stockholder (as defined in 26 U.S.C. 216) of a cooperative housing corporation (as defined in 26 U.S.C. 216); or

(iv) is a residence described in section 17.9 of this chapter that is owned by a trust if the individual is an individual described in section 17.9 of this chapter; and

(C) that consists of a dwelling and the real estate, not exceeding one (1) acre, that immediately surrounds that dwelling.

Except as provided in subsection (k), the term does not include property owned by a corporation, partnership, limited liability company, or other entity not described in this subdivision.

Accordingly, by accepting the homestead tax benefits for their Indiana home, Taxpayers' stated that their "principal place of residence" was located in Indiana for 2010. From all these facts, it is clear that Taxpayers were domiciled in Indiana in 2010. Therefore, regardless of the number of days Taxpayers were in Indiana for 2010, the Taxpayers were still Indiana residents. Therefore, Taxpayers were residents of Indiana for 2010 and their refund denial was proper.

FINDING

Taxpayers' protest is respectfully denied.

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